

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 2445 OF 1997

with

FIRST APPEAL NO. 3223 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

and

Hon'ble MR.JUSTICE H.K.RATHOD sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? No
  2. To be referred to the Reporter or not? Yes :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? No
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge? No :

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ISHWARBHAI BABUBHAI VAGHELA

Versus

RANJANBEN GOKALBHAI PRAJAPATI  
(in FA 2445 of 1997)

Manager, The Orientgal Insurance Co.Ltd.

versus

Ranjaben Gokalbhai Prajapati  
(in FA 3223 of 1997)

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Appearance:

MR RAJNI H MEHTA for Petitioners

MR SANJAY M AMIN for Respondent No. 1

MR KK NAIR for Respondent No. 5  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA

and

MR.JUSTICE H.K.RATHOD

Date of decision: 20/06/2000

ORAL COMMON JUDGEMENT

(Per : D.C.Srivastava, J.)

1. These two Appeals arising out of the same accident and involving common question of law and facts are proposed to be disposed of by common Judgment.

2. Interim Award of Rs.5,10,748/- together with interest at the rate of 12 % and proportionate cost was awarded by the Motor Accident Claims Tribunal, Nadiad, under Section 163-A of the Motor Vehicles Act. It is this Award which is under challenge in these two Appeals.

3. We have heard Shri A.R.Mehta and Shri K.K.Nair for the appellants and Shri Sanjay Amin for the respondents.

4. Learned Counsel for the appellants has contended that the Award is in excess of the amount indicated in the Second Schedule hence it cannot be sustained.

5. In First Appeal No.2445 of 1997 annual income of the deceased was assessed by the Tribunal at Rs.5696/and similar amount was assessed in other Appeal. Shri Mehta and Shri Nair have drawn our attention to the Second Schedule for the purpose of Section 163-A of the Motor Vehicles Act and contended that while awarding the interim compensation under this Section the Tribunal could not have considered annual income beyond Rs.40,000/- which is the outer limit. It was, therefore, contended that the criteria adopted by the Tribunal in proceeding to assess the compensation at the monthly income of Rs.5696/- is erroneous and also contrary to the Second Schedule of the Act. As against this Shri Amin has contended that the outer limit of Rs.4,000/- p.m. is only illustrative and it cannot be said that a person claiming annual income more than Rs.40,000/- is not entitled to interim compensation at the actual annual income. He has brought to our notice the Division Bench pronouncement of this Court in RAMDEVISING V. CHUDASMA V/S. HANSRAJBHAI V. KODALA, reported in 1999 (1) GLR 631. Special Reference was made by Shri Amin of observations made by the Division Bench in Para : 46 of the Judgment. In that case Shri Pandya contended before the Division Bench that Application under Section 163-A

of the Act would be limited for the only victims who had income upto Rs.40,000/- per annum and those victims who had income beyond Rs.40,000/- per annum are required to go for claim under Section 166 of the Act. Further contention of Shri Pandya in that case was that Section 163-A is provided for the person having low income with an instant relief. These contentions of Shri Pandya were not accepted by the Division Bench of this Court on the ground that if the contention is agreed it would be violative of Article 14 of the Constitution of India.

6. In the instant Appeals we are not concerned with victims having low or higher income. What Section 163-A of the Act says is that "Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation as indicated in the Second Schedule, to the legal heirs or the victims, as the case may be.

7. It is clear from plain reading of the above provision that the Tribunal is bound to award interim compensation under Section 163-A only for the amount and to the extent as indicated in the Second Schedule. We are unable to accept the contention of Shri Amin that the Tribunal has simply to take guidance from the Second Schedule and can travel beyond what is contained in the Second Schedule in suitable cases. That would be actually re-enacting and re-legislating Section 163-A of the Act which is not the function and jurisdiction of the Court. The Courts are required to interpret the provisions of the statute in conformity with the intention of the Legislature. We do not find any ambiguity in Section 163-A of the Act which requires interpretation. Even if for a moment the contention of Shri Amin is accepted, of course, a person claiming annual income exceeding Rs.40,000/- can move an application under Section 163-A of the Act, but the Tribunal while awarding compensation under this section can not travel beyond the annual income of the victim or the deceased at Rs.40,000/-. If any amount in excess of this annual income is to be claimed by the heirs of the deceased or by the victim he or they can do so under Section 166 of the Motor Vehicles Act. The intention of the Legislature in providing compensation under the structural formula has been to provide some adequate compensation to the victim or to the heirs of the deceased as interim measure. Adequate compensation under

Section 163-A of the Act is not to be equated with actual compensation to be awarded in the main claim petition under Section 166 of the Motor Vehicles Act. While deciding the main petition under Section 166 of the Act the jurisdiction of the Tribunal is widened and it can take into account the actual income of the deceased and can proceed to determine the actual compensation payable to the victim or to the heirs of the deceased. We are therefore unable to accept the contention of Shri Amin that the structural formula violates the provision of Article 14 of the Constitution of India.

8. After repelling the submission of Shri Amin we proceed to decide as to what should be the amount of compensation in the instant case. We can not accept, for the purposes of Second Schedule, the annual income of the deceased at the rate of Rs.5696/- per month. On the other hand maximum annual income under this Schedule should be Rs.4 lacs because the deceased was aged 53 years on the date of accident. 1/3 of this amount has to be deducted on account of personal expenditure of the deceased which comes to roughly Rs.1,33,000/-. The total compensation will, therefore, be Rs.2,67,000/-. Over and above other compensation awarded by the Tribunal amounting to Rs.9500/- has to be accepted and in this view of the matter the total compensation payable to the respondent under Section 163-A can not exceed beyond Rs.2,76,500/-. As such the compensation awarded by the Tribunal at Rs.5,10,748/- is excessive which has to be modified.

9. The Appeals, therefore, succeed in part and are hereby partly allowed. The figure of Rs.5,10,748/- in the impugned Award shall be substituted by Rs.2,76,500/-. The rate of interest will remain the same. The cost shall be calculated proportionately. With this direction the two Appeals are partly allowed with no order as to costs of these Appeals.

10. Before parting with this Judgment we direct the appellant to deposit a sum of Rs.2,76,500/- in the Tribunal within a period of six weeks from today. Out of the deposit so made, 30 % shall be paid to the claimants and 70 % shall be invested in some Nationalised bank in Fixed Deposit for a period of three years. The amount of interest accrued during this period shall be paid to the claimants. The claimants shall file written undertaking before the Tribunal that they shall proceed with the petition under Section 166 of the Motor Vehicles Act and shall get it decided on merit and shall not get it dismissed in default.

sd/-

Date : June 20, 2000 ( D. C. Srivastava, J. )

sd/-

( H. K. Rathod, J. )

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